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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



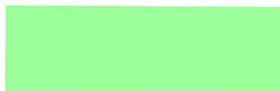
U.S. Citizenship
and Immigration
Services



DATE: OCT 29 2013 OFFICE: TEXAS SERVICE CENTER

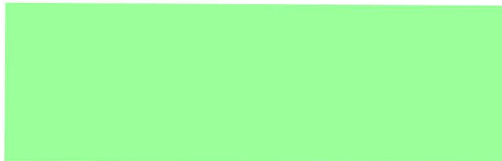
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

S Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a medical researcher. At the time he filed the petition, the petitioner was a fellow in cardiac electrophysiology at [REDACTED]

[REDACTED] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 27, 2012. In an introductory statement, counsel asserted that the petitioner “is a renowned cardiologist, specializing in electrophysiology, who has greatly influenced his field by making pioneering insights and discoveries regarding cardiovascular diseases.” Counsel stated that the petitioner “has authored or co-authored ninety eight (98) scholarly articles, three (3) book chapters, and forty (40) conference abstracts,” and that

the petitioner's "research has been cited at least two hundred eighty eight (288) times by scientists worldwide."

Five witness letters accompanied the initial filing. Three witnesses are on the faculty of the [REDACTED] part of [REDACTED] Professor [REDACTED] director of [REDACTED] Division of Cardiology, stated:

[The petitioner] and I have collaborated on research work regarding the contribution of the autonomic nerve system on the development of arrhythmia. Arrhythmias are conditions of the heart in which the electrical activity of the heart is abnormal. . . .

[The petitioner's] research includes a study in which he explored whether neural remodeling caused by acute myocardial infarction (AMI) (i.e. heart attacks) involves the stellate ganglion and increases stellate ganglionic neural activity. . . . [In a study involving dogs, the petitioner] observed that AMI results in a persistent increase of synaptic density and neural activity of the left stellate ganglia for two months. . . .

With [the petitioner's] major study and his findings, the research community can focus its efforts on developing new methods of treatment and prevention of cardiac arrhythmias. . . . He has attained significant progress in the understanding of cardiac arrhythmias through his various research projects and I am convinced that his work will continue to be of world-wide importance.

Professor [REDACTED] of [REDACTED] of Cardiology stated:

[The petitioner] has . . . completed several groundbreaking projects in the area of cardiology. He and I have conducted joint research and published several articles together. . . .

[The petitioner's] research is important because it showed that a heart attack results in at least three changes in the heart: increased nerve density of both the right and left stellate ganglia, increased nerve activity in the left stellate ganglion, and increased nerve activity in the left thoracic vagus nerve.

For cardiologists, [the petitioner's] work is groundbreaking in that it clearly shows the changes that occur in the heart and its nerve activities after a heart attack. Given the limited knowledge we had in the field previously on post-heart attacks physiology changes, his results tell us exactly what autonomic nerve activities and structural remodeling we can expect to see in a patient following a heart attack. This enables cardiologists to provide preventative care, if any exists, or to at least monitor closely the changes the heart will experience after a heart attack. In my opinion, this will improve the care we can provide to patients.

Professor [REDACTED] who has collaborated with the petitioner at the [REDACTED] of Cardiology, stated:

[The petitioner] is one of the major figures in cardiology who has provided immeasurable benefits to the study of myocardial infarctions and related heart conditions. . . .

Atrial fibrillation (AF) originates above the ventricular tissue (bottom chamber of the heart); it is thought that in some patients a persistent left superior vena cava (PLSVC) leads to AF. Still, the electroanatomical characteristics of PLSVC . . . are poorly understood. . . .

[The petitioner's] project revealed that a PLSVC had an important role as a trigger or driver for AF in some patients, and concomitant supraventricular tachycardia is common in AF patients with PLSVC. Most importantly, an index procedure for AF ablation including a routine PLSVC isolation may reduce the recurrence rate of arrhythmias, rather than relying on pulmonary vein isolation alone. This breakthrough discovery is significant in that it offers cardiologists information on possible medical procedures that can prevent future arrhythmias.

Dr. [REDACTED] director of [REDACTED] Utah, previously collaborated with the petitioner. Dr. [REDACTED] stated that the petitioner "found that electroanatomic mapping of RVOT [right ventricular outflow tract] demonstrated a small-sized abnormal voltage area in . . . patients with RVOT VT [ventricular tachycardia]," which "all previous studies" had failed to demonstrate. Dr. [REDACTED] asserted that the petitioner's contribution "will improve medical treatment options for this life-threatening arrhythmia."

Professor [REDACTED] Italy, stated that the petitioner's "new approach to study electroanatomical remodeling of the left stellate ganglion after a heart attack" using radio transmitters is "a milestone in the study of myocardial infarctions" that "has since become a landmark model for myocardial infarction research." Prof. [REDACTED] stated: "Since I heard of [the petitioner's] project, I have become interested in experimenting with radiotransmitters in my own research. I am excited at the prospect of obtaining key information on heart attacks."

The petitioner documented his involvement at numerous medical conferences, including an invitation to chair a symposium on [REDACTED]

The petitioner submitted the first pages of 96 journal articles naming him as co-author, as well as abstracts of 27 conference presentations. To establish the impact of the articles, the petitioner submitted a printout from the Google Scholar search engine. The petitioner's author profile included the following statistics:

	All	Since 2006
Citations	288	262
h-index	10	9
i10-index	10	8

The h-index refers to the highest number h for which h articles have at least h citations. Thus, the petitioner had 10 articles with at least 10 citations each overall, and nine articles with at least nine citations each since 2006. The i10-index is the number of articles with at least 10 citations each, indicating that eight of the petitioner's articles since 2006 had earned at least 10 citations each, as of the date of the printout (November 28, 2011).

The petitioner's most highly cited article had collected 30 citations since its publication in 2009. Two other articles had more than 20 citations each. Fifty-one articles had at least one citation. A bar graph on the printout showed little interest in the petitioner's work between 1997 and 2004. 2005 saw the beginning of a trend of sustained and building citation. 2010 brought a significant increase, with 87 total citations that year, more than double the previous year's figure. The 2011 figure was nearly as high.

On August 24, 2012, the director issued a request for evidence, instructed the petitioner to "submit any additional documentary evidence that, as of the petition priority date, [he] had a degree of influence on [his] field that distinguishes [him] from other physicians." In response, counsel asserted that the initial evidence, including witness letters and citation data, should have been sufficient to establish eligibility for the waiver.

The petitioner submitted materials showing that authors in 23 countries have cited his work. The petitioner also submitted three additional witness letters. Dr. [REDACTED] associate professor at [REDACTED] stated that the petitioner's "astounding findings have important meaning in the context of the pathophysiology of human atrial fibrillation because they indicate that the number and type of anatomical connections cause and maintain atrial fibrillation."

Professor [REDACTED] stated that the petitioner "greatly contributed to the successful outcomes" of [REDACTED] a biennial conference, in 2007 and 2009.

Professor [REDACTED] stated that one of the petitioner's recent articles "received widespread attention. . . . [H]is work has been very influential for those of us who study ventricular arrhythmias and electrophysiology."

[REDACTED] is a co-author of an editorial comment in the [REDACTED] acknowledging the limitations of the petitioner's article but finding it to be "important on multiple fronts. For the first time, there is direct physiologic evidence that neural remodeling within the stellate ganglia is associated with increased SGNA" (stellate ganglion nerve activity).

Another editorial comment, in [REDACTED] praised the “elegant and painstaking work” of the petitioner and his co-authors in an article concerning possible causes of atrial fibrillation.

The director denied the petition on January 16, 2013. The director acknowledged the intrinsic merit and national scope of the petitioner’s work, and stated that the petitioner “would likely make a positive contribution to the United States through his work.” The director then stated:

The record of proceeding, however, does not establish that the petitioner’s contribution to his area of expertise has, thus far, been significantly more than exceptional. . . . Petitioner’s publication of articles has been noted, as has the citation record, although not noteworthy with few citing his work. . . . It therefore appears that the petitioner has conducted no impactful original research, has not published the results of any impactful original research in learned journals, and has no record of sharing any impactful research findings with others at learned conferences.

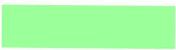
On appeal, counsel asserts that the petitioner “is a highly influential scientist whose work has been cited at least 288 times by scientists worldwide,” and that the director based the decision on “incorrect” assertions regarding the petitioner’s research and publications.

The record readily supports counsel’s assertions. The director’s finding that the petitioner had documented “few” citations is in direct conflict with ample documentation in the record. Witnesses, including independent experts, have done more than simply praise the petitioner’s work as promising; they have identified specific ways in which the petitioner has already influenced his peers. Published editorial comments show that these opinions are not restricted to letters solicited especially to support the petition.

The well-documented heavy citation of the petitioner’s work establishes that the field has taken serious interest in the petitioner’s work, and credible witness statements have explained the nature and importance of the petitioner’s efforts. The record refutes the director’s stated grounds for denial of the petition. Therefore, the AAO will withdraw the director’s decision and approve the petition.

The petitioner, on Form I-140, specified that he seeks to work in the United States as a “Medical Researcher” who will “[c]onduct research dealing with the understanding of human diseases and the improvement of human health.” The national interest waiver requires prospective (*i.e.*, future) national benefit. This petition is approved based on the assertion that the petitioner will continue working as a medical researcher. The record does not reveal the nature of the petitioner’s current employment (if any) in Utah, where he currently resides.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the medical community recognizes the significance of this petitioner’s research rather than simply the general area of research. The benefit of retaining this alien’s services outweighs the national interest that is inherent in the labor certification



process. Therefore, on the basis of the evidence submitted, and contingent on his continued work as a medical researcher, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained.